

## Office of Thrift Supervision, Treasury

## § 563.47

directs the formation of an underwriting syndicate; or

(iii) Is allowed a rate of gross commission, spread, or other profit greater than the rate allowed another underwriter participating in the distribution.

(e) *Recordkeeping requirements.* With respect to all transactions subject to this section between a savings association and its subsidiaries and the association's affiliates or between a savings association and an unaffiliated party to the extent that the proceeds of the transaction are used for the benefit of, or transferred to, an affiliate, the association shall make and retain records, that reflect those transactions in reasonable detail. The association's records shall, at a minimum, include the information required by § 563.41(e)(1)(v) of this part.

[56 FR 34013, July 25, 1991, as amended at 60 FR 66869, Dec. 27, 1995]

### § 563.43 Loans by savings associations to their executive officers, directors and principal shareholders.

Pursuant to 12 U.S.C. 1463(a) and 1468, a savings association, its subsidiaries and its insiders (as defined) shall be subject to the restrictions contained in 12 CFR Part 215, subparts A and B of the Federal Reserve Board's Regulation O, with the exception of 12 CFR 215.13, in the same manner and to the same extent as if the association were a bank and a member bank of the Federal Reserve System, except that:

(a) Such provisions shall be administered and enforced by the OTS;

(b) References to the term "bank holding company" shall be deemed to refer to "savings and loan holding company";

(c) References to "report of condition filed under 12 U.S.C. 1817(a)(3)" shall be deemed to refer to "Thrift Financial Report";

(d) The term *subsidiary* shall include a savings association that is "controlled," within the meaning of § 563.41(a)(3) of this part, by a company (including for this purpose an insured depository institution) that is a savings and loan holding company. When used to refer to a subsidiary of a savings association, the term *subsidiary* shall mean a "subsidiary" as that term

is defined at § 563.41(b)(4) of this part; and

(e) References to the Reserve Bank or the Comptroller shall be deemed to include the Director of the Office of Thrift Supervision.

(f) References to the term "unimpaired capital and unimpaired surplus" shall be deemed to refer to "unimpaired capital and unimpaired surplus" as defined at § 563.93(b)(11) of this part.

[57 FR 45980, Oct. 6, 1992, as amended at 59 FR 53571, Oct. 25, 1994; 60 FR 66869, Dec. 27, 1995]

### § 563.47 Pension plans.

(a) *General.* No savings association or service corporation thereof shall sponsor an employee pension plan which, because of unreasonable costs or any other reason, could lead to material financial loss or damage to the sponsor. For purposes of this section, an employee pension plan is defined in section 3(2) of the Employee Retirement Income Security Act of 1974, as amended. The prospective obligation or liability of a plan sponsor to each plan participant shall be stated in or determinable from the plan, and, for a defined benefit plan, shall also be based upon an actuarial estimate of future experience under the plan.

(b) *Funding.* Actuarial cost methods permitted under the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1954, as amended, shall be used to determine plan funding.

(c) *Plan amendment.* A plan may be amended to provide reasonable annual cost-of-living increases to retired participants: *Provided, That*

(1) Any such increase shall be for a period and amount determined by the sponsor's board of directors, but in no event shall it exceed the annual increase in the Consumer Price Index published by the Bureau of Labor Statistics; and

(2) No increase shall be granted unless (i) anticipated charges to net income for future periods have first been found by such board of directors to be reasonable and are documented by appropriate resolution and supporting analysis; and (ii) the increase will not reduce the association's regulatory